

## REMARKS

In the Office Action, claims 1-27 are rejected under 35 U.S.C. § 103. More specifically, claims 1-10 and 12-27 are rejected in view of U.S. Patent No. 5,869,121 ("*Brescia*") and further in view of U.S. Patent No. 4,039,692 ("*Clausen*"), GB 2237497 and U.S. Patent No. 4,781,939 ("*Martin*"); and claim 11 is rejected under 35 U.S.C. § 103 over *Brescia* in view of *Clausen*, GB 2237497 and *Martin* and further in view of U.S. Patent No. 5,004,064 ("*Koschak*"), U.S. Patent No. 4,191,783 ("*Burkwall*") or U.S. Patent No. 4,011,345 ("*Bartsch*"). Applicants believe that the obviousness rejections are improper for the reasons set forth below.

Of the pending claims at issue, claims 1, 5, 8, 12, 18 and 24 are the sole independent claims. Claim 1 recites a pet treat that includes a sealed container and at least one piece of a formulated food product in the container wherein the piece includes a fried body of a thermally gelled matrix that contains protein and starch and has a moisture content of at least 25% by weight. Claim 5 relates to a retorted, pet treat. The pet treat includes a retortable, sealed container, and at least one piece of a formulated food product in the container wherein the piece includes a fried body of a thermally gelled matrix that contains protein and starch and has a moisture content of above 30% by weight.

Claim 8 recites a pet treat that includes a sealed container and at least one piece of a formulated food product and a preservative in the container wherein the piece includes a fried body of a thermally gelled matrix that contains protein and starch and has a moisture content of at least 25% by weight. Claim 12 recites a process for producing a fried pet treat product. The process includes the steps of thermally gelling a protein source and a starch source for providing a thermally gelled matrix; forming the thermally gelled matrix into pieces; frying the pieces for providing fried pieces and reducing the moisture content of the pieces to no less than 25% by weight; filling the pieces into a container; and sealing the container.

Claim 18 recites a process for producing a retorted pet treat. The process includes thermally gelling a protein source and a starch source for providing a thermally gelled matrix; forming the thermally gelled matrix into pieces; flash frying the pieces for providing fried pieces; and filling the pieces into a retortable container and retorting container.

Claim 24 recites a retorted pet treat that includes at least one piece of a formulated food product in a retortable, sealed container wherein the piece has a moisture content of no less than 25% by weight and a fried body of a thermally gelled matrix. The pet treat is produced by a

process that includes thermally gelling a protein source and a starch source for providing a thermally gelled matrix; forming the thermally gelled matrix into pieces; flash frying the pieces for providing fried pieces; and filling the pieces into a retortable container and retorting the container.

As previously discussed, the present invention provides a pet treat in the form of pieces of a formulated food product in a sealed container. Each piece includes a fried body of a thermally gelled matrix that contains protein and starch and has a moisture content of at least about 25% by weight. Pet treats in this form are particularly suited for cats and dogs, depending on the final product makeup. See, Specification, page 4, lines 4-9.

Where the pieces are sealed in a retortable container, for retorting in due course, their moisture content can be above about 30% by weight, preferably from about 35% to about 50% by weight and more preferably about 40%. For non-retorted products, it is desirable to keep the moisture content relatively low, for example, preferably from about 25% to 35% by weight. See, Specification, page 4, lines 11-13. The pet treats of the present invention simulate the appearance of meat and are further palatable to eat. See, Specification, page 1, lines 5-7.

In contrast, Applicants believe that the cited art is deficient with respect to the claimed invention. As even admitted by the Patent Office, the *Brescia* reference fails to disclose the claimed moisture content of at least about 25% by weight. Indeed, the primary focus of *Brescia* relates to a moisture-reduced food product that has a moisture content of less than 20% by weight. See, *Brescia*, column 1, lines 42-46. Clearly, this teaches away from the claimed invention that relates to a fried pet treat with a moisture content that is at least about 25% by weight. Based on at least this reason, *Brescia* should not be considered relevant art and thus the obviousness rejections should be withdrawn in view of same.

In any event, Applicants believe that the Patent Office cannot rely on the remaining cited references to remedy the deficiencies of *Brescia*. With respect to the *Clausen* reference, the primary focus relates to animal foods that preferably have a moisture content that ranges from 35% to 60%, especially between 35% and 45%. See, *Clausen*, column 1, lines 6-8; column 4, lines 31-34. Indeed, the *Brescia* reference teaches against a pet food product with a moisture content that is above 20% as previously discussed. Again, the primary focus of *Brescia* is to provide a moisture-reduced food product.

Further, the *Clausen* reference does not necessarily relate to a fried pet food product that includes the thermally gelled matrix claimed by Applicants. For example, *Clausen* discloses that meat, glycerin, propylene, glycol, water and the remaining ingredients were first separately premixed at ambient conditions. The mixtures were then blended together to form a raw matrix. While still raw, this matrix was then formed into discrete round pieces using an ACCUPAT former. The pieces were then deep fat fried at 300°F for three minutes. See, *Clausen*, col. 4, lines 55-63. This contrasts the claimed invention where a thermally gelled matrix is formed at temperatures that can exceed 100°C and thereafter the product is subjected to frying conditions, such as flash frying conditions for less than one minute. See, Specification, page 8-9, Examples 1 & 2. Based on at least these differences, why then would one skilled in the art be inclined to modify *Brescia* in view of *Clausen* as the Patent Office suggests?

With respect to the remaining references, the Patent Office cannot rely on any one or combination thereof to remedy the deficiencies of *Brescia*, particularly with respect to its deficiencies regarding the moisture content feature as claimed and discussed above. Indeed, the Patent Office merely relies on GB 2237497 for its alleged teachings regarding a flash-fried product that is packed in a sealed pouch; *Martin* for its alleged teaches regarding a meat emulsion and processing thereof; and *Koschak*, *Burkwall*, or *Bartsch* for their alleged teachings regarding the pH of a food mixture in support of the obviousness rejection with respect to claim 11.

Based on at least these reasons, Applicants believe that the cited art is deficient with respect to the claimed invention. Therefore, Applicants believe that the cited art fails to render obvious the claimed invention.

Accordingly, Applicants respectfully request that the obviousness rejections be withdrawn.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

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Dated: October 2, 2003